

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TELLY ROYSTER,)	
)	Civil Action No. 09 – 1150
Plaintiff,)	
)	District Judge Donetta W. Ambrose
v.)	Chief Magistrate Judge Lisa Pupo Lenihan
)	
BEARD, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff, Telly Royster (“Plaintiff”) is a state prisoner who is currently incarcerated at the State Correctional Institution at Camp Hill, Pennsylvania (“SCI-Camp Hill”). Plaintiff filed this suit in the Middle District of Pennsylvania on April 8, 2008, pursuant to 42 U.S.C. § 1983 alleging violations of his rights under the United States Constitution. Plaintiff also raised claims for relief pursuant to various state tort laws. Plaintiff was granted leave to proceed *in forma pauperis* and filed an amended complaint on August 4, 2008.

This case was transferred to this Court on August 19, 2009, and was assigned to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judge’s Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court for Magistrate Judges. Plaintiff filed a second amended complaint on August 12, 2010, and Defendants filed a partial motion to dismiss and partial answer on August 20, 2010. On February 28, 2011, Magistrate Judge Cathy Bissoon issued a Report and Recommendation recommending that the partial motion to dismiss be granted with prejudice in part, granted without prejudice in part, and denied in part. The Report

and Recommendation was adopted as the opinion of this Court on March 21, 2011, except as to any conclusion made by the Magistrate Judge with respect to the claims against Defendant Christopher Meyer.

Plaintiff filed a third amended complaint on November 4, 2011, and on November 17, 2011, Defendant Meyer filed a motion to dismiss, along with a brief in support thereof. Magistrate Judge Lisa Pupo Lenihan issued a Report and Recommendation on February 28, 2012, recommending that the motion be denied with respect to Plaintiff's Eighth Amendment deliberate indifference claim, that the motion be denied as premature with respect to Plaintiff's request for punitive damages, and denied as moot with respect to dismissal of a retaliation claim. Plaintiff was served with the Report and Recommendation at his listed address and was advised that he had until March 16, 2012, to file written objections. Plaintiff was subsequently granted an extension of time to file objections, but on April 9, 2012, Plaintiff waived his right to file objections to the Report and Recommendation.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered.

AND NOW, this 3rd day of May, 2012,

IT IS HEREBY ORDERED that Defendant Meyer's Motion to Dismiss (ECF No. 126) is denied with respect to Plaintiff's Eighth Amendment deliberate indifference claim, is denied as premature with respect to Plaintiff's request for punitive damages, and denied as moot to the extent it seeks dismissal of a retaliation claim as the Court does not read Plaintiff's third amended complaint to assert such a claim against Defendant Meyer.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 145) dated February 28, 2012, is **ADOPTED** as the opinion of the Court.

By the Court:

A handwritten signature in black ink, reading "Donetta W. Ambrose". The signature is written in a cursive style with a horizontal line underneath the name.

Donetta W. Ambrose
United States District Judge

cc: Telly Royster
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SCI Camp Hill
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Camp Hill, PA 17001

Counsel of record.